

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

KATHY (KELLER) KAY,

Respondent

v.

JOHN B. KELLER II.

Appellant

DOCKET NUMBER WD78235

DATE: JUNE 2, 2015

Appeal From:

Circuit Court of Cole County, MO
The Honorable Patricia S. Joyce, Judge

Appellate Judges:

Division Three
Mark D. Pfeiffer, PJ., Gary D. Witt, Anthony Rex Gabbert, JJ

Attorneys:

Sara Catherine Michael, Jefferson City, MO,

Counsel for Respondent

Attorneys:

Carla Grace Holste, Jefferson City, MO

Counsel for Appellant

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

KATHY (KELLER) KAY,

Respondent,

v.

JOHN B. KELLER II,

Appellant.

WD78235

Cole County

Before Division Three Judges: Mark D. Pfeiffer, PJ., Gary D. Witt, Anthony Rex Gabbert, JJ

John B. Keller, II (“Father”) appeals the circuit court’s grant of summary judgment in favor of Kathy Kay (“Mother”) on Father’s motion to modify child support. Father contends that the circuit court erred: (1) in granting summary judgment because Mother was not entitled to judgment as a matter of law because Father is not required to ask the court for continued support prior to Son reaching the age of eighteen; (2) in granting summary judgment because there were disputed material facts as to Son’s incapacity and ability to support himself; (3) in finding Son emancipated because there was overwhelming evidence that Son was unmarried, mentally incapacitated, and insolvent, and; (4) in finding Son emancipated because Mother failed to meet her burden of proving emancipation.

REVERSE AND REMAND

Division Three holds:

- (1) The circuit court erred in granting summary judgment to Mother on the grounds that Son was emancipated for not having enrolled full-time in a post-secondary educational institution pursuant to Section 452.340.5 without considering Father’s claims that Son was in need of continued support past the age of eighteen due to being mentally incapacitated, insolvent, and unmarried pursuant to Section 452.340.4.
- (2) The circuit court erred in granting summary judgment to Mother in that genuine disputes of material fact are evident on the face of the record and Mother was not entitled to judgment as a matter of law.
- (3) As we reverse on other grounds, we need not address Father’s claim that overwhelming evidence supported that Son was unmarried, mentally incapacitated, and insolvent.
- (4) As we reverse on other grounds, we need not address Father’s claim that Mother failed to meet her burden of proving emancipation.

Opinion by Anthony Rex Gabbert, Judge

Date: 6/02/15

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